

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* WILLS/ABBY/ABBY-BYRD, Minors.

UNPUBLISHED  
March 17, 2015

No. 322815  
Wayne Circuit Court  
Family Division  
LC No. 14-515562-NA

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Before: BOONSTRA, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's order terminating her parental rights to her five children: MW, EW, JW, DA, and LA.<sup>1</sup> We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In January 2014, petitioner filed a petition seeking termination of respondent's parental rights to the five children. The petition alleged that DA had been physically abused; specifically, the petition indicated that a doctor who had examined DA had reported that DA was covered in "loop marks in various stages of healing" all over her body "including arms, back, legs, buttocks, and vaginal area," had a distended stomach, and a contusion (bruise) on her liver as a result of being hit in the abdomen. DA told the doctor that respondent hit her daily with extension cords, belts, and bare hands. The petition also alleged that a doctor had examined the other children and reported that EW had multiple linear scars on his back, JW had one linear scar on her back above the buttocks, and MW had a large linear scar on his abdomen and old loop marks in the center of his back. JW reported to Children's Protective Services (CPS) that he "used to [be] beaten" by respondent and that respondent beat DA because she steals food. The children were dirty and dressed in soiled clothes during the examination. Further, JW stated that his home did not have running water or electricity.

CPS investigated respondent's home and found "unsuitable conditions, including lack of utilities and excessive clutter." The petition alleged that respondent had prior CPS contacts

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<sup>1</sup> Although the two fathers of the children were also respondents in the proceeding below, their parental rights were not terminated, and the fathers are not parties to this appeal.

dating back to 2004 due to allegations of improper supervision, environmental neglect, domestic violence, and physical neglect. The investigation in 2012 was substantiated; the others were not.

The children were removed from respondent's care and placed with an aunt temporarily, although they were later placed in foster care. The trial court authorized supervised visitation at the Department of Human Services agency building. The trial court later suspended visitation between respondent and DA after DA reported to her lawyer guardian ad litem that she was afraid of respondent.

Prior to trial, petitioner filed a "tender years" motion, seeking to have DA and JW's hearsay statements regarding petitioner's abuse and neglect admitted at the adjudication bench trial. The motion was heard at the beginning of trial. DA's father (also the father of MW, EW, and JW) testified that respondent had called him in January 2015 and asked him to take DA and keep her "forever." He also testified that when he took DA to his house, she was walking "a little peculiar," her stomach was "big," and she had a prominent, curved scar between her eyebrows. He further testified that he discovered hook-shaped marks all over DA's body when he bathed her, including her arms, legs, back, and buttocks; he testified that the marks matched the scar between her eyebrows. He testified that DA told him that respondent "whooped" her and that caused the marks on her body. Finally, DA's father testified that he contacted DA's godmother, who contacted CPS.

The trial court did not specifically rule on petitioner's motion, because, following the testimony of DA's father, respondent (as well as the two fathers) agreed to plead no contest to petitioner's allegations and to admit DA's medical records as the factual basis for that plea. Respondent and petitioner agreed that the trial court could use DA's medical records to determine whether it should assume jurisdiction over the children, as well as whether a statutory ground for termination had been proven by clear and convincing evidence. The trial court found, based on the parties' no-contest pleas and DA's medical records, that it could appropriately take jurisdiction over the children. The trial court did not find at that time that a statutory ground for termination of respondent's parental rights had been proven by clear and convincing evidence, and scheduled a dispositional hearing for April 4, 2014. However, the trial court noted that it had only heard an oral summary of the contents of the medical records by petitioner's counsel, that it would review them prior to the dispositional hearing, and that if "the information contained in these records is grossly different from the summary that I've heard today I will be changing my recommendation." Respondent was also ordered to participate in a psychological evaluation. The trial court issued an order shortly after the bench trial, which stated that it found clear and convincing evidence to terminate respondent's parental rights to all five children pursuant to MCL 712A.19b(3)(b)(i) (child or child's sibling suffered physical abuse and there is a reasonable likelihood child will suffer abuse if placed in parent's care).

The medical records supported the testimony concerning DA's injuries. Specifically the medical records noted numerous loop marks and linear markings on DA's face, extremities, back, and buttocks, in various stages of healing. Further, DA's labia were bruised and she had suffered trauma to her abdomen. The medical records stated that DA had told medical professionals that respondent had caused the scars by having her remove all of her clothes before hitting her with cords, belts, and her hands.

At the scheduled dispositional hearing on April 4, 2014, it was revealed that respondent was incarcerated at that time. The trial court heard some testimony concerning visitation by the two fathers. The trial court did not suspend visitation for respondent at that time and set another hearing for April 28, 2014.

The trial court heard testimony related to the best interests of the children at a dispositional hearing<sup>2</sup> that spanned several months. Heather Hanna, DA's foster care worker, testified that respondent had allowed DA's godmother to raise DA for the first three years of her life. DA told Hanna that respondent beat her with a cord, belt, and her hand. DA stated that she believed her mother wanted her dead. DA also told Hanna that respondent used to whip MW with an extension cord. DA also told Hanna that DA was forced to sleep on the couch in the living room and that it was "very, very cold;" the other children slept upstairs with respondent. DA told Hanna that she wanted to live with her godmother. Hanna testified that DA and her godmother were bonded and that DA was not bonded with respondent.

DA's godmother became DA and LA's foster mother in June 2014. Hanna testified that the godmother provided the girls with a safe environment and that they were improving and doing very well in the placement.

Hanna testified that MW was hospitalized from March 11, 2014 to the beginning of April 2014 after he stated during a therapy intake session that he wanted to kill himself. Hanna testified that at the intake appointment MW tried to choke himself and hang himself with his sleeve and stated that he "wished he had never been born." After his release, MW required "crisis intervention" and a "partial hospitalization program" to address his severe behavioral issues, including running away from school and running into the street while saying that he wanted to be hit by a car and die. Hanna stated that MW had no coping skills and would become suicidal within a matter of seconds.

Hanna testified that respondent did not believe that MW suffered from suicidal ideation or behavioral problems, and that respondent instead believed that MW would be fine if he returned home. She suggested that Hanna was the cause of MW's problems by "questioning him too much" and "putting things in his head." Respondent also refused a prescription for an antidepressant for MW, and refused to have an Individualized Education Plan (IEP) developed for him at his school to address his emotional and educational needs.

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<sup>2</sup> The dispositional hearing did not concern statutory grounds for termination of respondent's parental rights, but rather only addressed the best interests of the children; this is because respondent had stipulated that the trial court could use DA's medical records to determine whether a statutory ground for termination had been proven by clear and convincing evidence, and because trial court had in fact already made that determination. The record before this Court is unclear regarding the continued pendency, at the time of the dispositional hearing, of proceedings relative to the children's fathers; that question is, in any event, irrelevant to this appeal.

Hanna further testified that MW claimed that respondent had stabbed him in the neck and did not take him to the hospital, although it is not clear from the record when this event occurred. MW told Hanna that it was his fault that he got stabbed for “bugging [respondent] in the kitchen while she was cooking.” MW also told Hanna that the children received “whoopings” from respondent and that he and DA were hit with an extension cord. MW had several loop marks on his side and back. MW told Hanna that respondent had once locked the children out of the house and they had to crawl back in through a broken window. MW told Hanna that there was not a lot of food in respondent’s home and that everyone had to sleep in one bedroom with a space heater because the house was cold. Both MW and DA were found hoarding food in their foster homes after removal.

MW testified that respondent frequently went to the casino and left him in charge of the other children.<sup>3</sup> MW had to make food for the other children and care for them. MW and EW once started a fire while trying to fix a video game. MW got all the children out of the house, but told Hanna that he wished he had “gone back in to die.” MW wanted to live with his father.

Hanna testified that JW told her that the children had to ask neighbors for food because respondent “bought very little food and when she did it was for herself.” Hanna testified that JW had a large loop mark on his back. JW would not discuss respondent’s physical discipline and would begin screaming and run away when Hanna asked him questions about it. JW would not state a preference regarding with whom he wanted to live, and would get “quite upset” when Hanna asked.

EW told Hanna that respondent “whooped” him with an extension cord. Hanna testified that EW would avoid discussion of the conditions of respondent’s home. EW sometimes told Hanna that he wanted to live with respondent, but at other times stated that he wanted to live with his father. LA was less than one year old at the time of the hearing and had been in foster care since she was three months old.

Hanna testified that the older children exhibited extreme behavioral problems and required therapy. MW, EW, and JW were “returned” by their first foster home placement after they “beat up” the foster parents’ biological child. EW was moved to five different foster homes because his foster parents could not handle him. Hanna testified that EW robbed other children on the school bus and stole from stores and his school. DHS had to have extra staff on hand for safety reasons when the children visited the agency. MW and EW were very behind in school.

After petitioner filed the petition, respondent was charged with two counts of third-degree child abuse. Hanna testified that at the criminal trial, MW testified that he “forgot” who

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<sup>3</sup> MW was eleven years old at the time of the initial dispositional hearing.

had stabbed him. Hanna stated that respondent was ordered to have no contact with her children when she was released on bond in April 2014.<sup>4</sup>

Before respondent was ordered not to have contact with her children, Hanna supervised her visits with MW, EW, JW, and LA. Respondent was frequently late for her visits by a half-hour or forty-five minutes. Hanna testified that the visits were “chaotic.” Hanna was concerned that respondent used visiting times to coach the children; both JW and MW told her that respondent had told them not to talk about her or DA’s “business.”

Hanna testified that DA stated that “she wanted nothing to do with her mother. She never wants to see her again, basically.” Hanna testified that DA was sometimes at the agency in a separate room when respondent visited her other children. Hanna testified to three incidents where DA vomited after hearing respondent’s voice through the walls.

Hanna testified that respondent and the children’s fathers could not be in the same room at the same time because they would “physically fight.” LA’s father told Hanna that the children had witnessed a lot of domestic violence in the home. He told her that after respondent was released from jail in 2014, she came to his home and sliced his throat with a razor, just missing an artery. He stated that respondent was angry that he had not bailed her out of jail. He told Hanna that he had marks all over his body from previous altercations where respondent had cut him. Respondent told Hanna that LA’s father had cut his jaw when they “tussled” and that he had fallen.

Hanna opined that it was in the best interest of the children to terminate respondent’s parental rights, especially because respondent denied ever abusing her children, denied that her children had special needs, and denied any problems with her home. Hanna expressed her fear that respondent would retaliate against the children for what they had told her.

The godmother testified that respondent had asked her to take DA right after she was born and that DA had begun to live with her two days after she was born; respondent granted her guardianship of DA in November 2008. Respondent apparently continued to receive state assistance for DA; when that assistance was terminated, respondent terminated the godmother’s guardianship so that respondent could continue to claim state assistance for DA. However, respondent did not take DA back to live with her until 2012. The godmother testified that respondent only visited DA when contacted to do DA’s hair, and that respondent never provided financial support or even celebrated DA’s birthday. In 2012, respondent accused the godmother of reporting her to CPS and told her that she would never see DA again. The godmother testified that DA and LA were happy living with her and that she was willing to have them live with her over the long term. She expressed her fear that respondent would retaliate against the older children for revealing the abuse.

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<sup>4</sup> It appears from Hanna’s testimony, but without explanation, that the “no-contact” order may not have applied to LA; we note, however, that LA was approximately 6 months old at the time of respondent’s release on bond and that LA was in foster care at that time.

The trial court stated, based on the evidence offered at the dispositional hearing, that termination as to respondent was not only appropriate under MCL 712A.19b(3)(b)(i) (as it had previously found), but that it was also appropriate under MCL 712A.19b(3)(g) (parent fails to provide proper care and custody), (j) (reasonable likelihood that a child will be harmed if returned to parent), and (k)(iii) (parent battered, tortured, or severely abused child or child's sibling). However, the trial court stated that it would proceed to the best-interest determination based solely on its earlier finding that MCL 712A.19b(3)(b)(i) had been proven by clear and convincing evidence. The trial court determined that it was in the children's best interest to terminate respondent's parental rights.

The trial court found that respondent had deprived her children of food, left them alone for extended periods of time, and sometimes locked them out of the house. It found that the children had been exposed to extensive domestic violence. It further found that "[t]he level of abuse [DA] suffered could be classified as torture." The trial court noted respondent's denial and lack of remorse for the abuse her children suffered. It stated that "[u]nfit is an understatement in describing mother. She is a danger not only to [DA] but to each of her children." The trial court terminated respondent's parental rights to all five children. This appeal followed.

## II. STANDARD OF REVIEW

We review for clear error a trial court's finding that a statutory ground for termination has been proven by clear and convincing evidence, MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004), and the court's finding that termination was in the best interests of the child, *In re Trejo*, 462 Mich 341, 364; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297.

## III. STATUTORY GROUND FOR TERMINATION

To terminate parental rights under MCL 712A.19b, the court must find clear and convincing evidence that one of the statutory grounds for termination exists. *In re Trejo*, 462 Mich at 350.

Respondent argues that the trial court erred in determining that the statutory ground for termination found in MCL 712A.19b(3)(b)(i) was proven by clear and convincing evidence. However, respondent pleaded no contest to the allegations in the petition, which included, inter alia, allegations that respondent had physically abused DA. Respondent was specifically informed that her plea, and the medical records that formed the factual basis for the plea, could be used to establish not only the trial court's jurisdiction over the children, but also that a statutory ground for termination existed. Respondent's plea indicates that she did not contest that a statutory basis for termination existed. See *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Respondent does not challenge the validity of her plea; therefore she has waived any challenge to the evidence establishing a statutory basis for termination. See *id.*; *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Further, even if we considered this claim, the medical records admitted at the trial court are replete with clear and convincing evidence that DA "suffered physical injury or physical or sexual abuse" and that "[t]he parent's

act caused the physical injury or physical or sexual abuse and . . . there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home." MCL 712A.19b(3)(b)(i). We therefore hold that the trial court did not clearly err in determining that a statutory ground for termination was proven by clear and convincing evidence.<sup>5</sup>

#### IV. BEST-INTEREST DETERMINATION

It appears that respondent also argues<sup>6</sup> that the trial court erred in finding that termination of respondent's parental rights was in the children's best interests. We disagree. Once a statutory ground for termination is proven, a trial court shall order termination of parental rights if it finds that termination is in the children's best interests. MCL 712A.19b(5). The trial court must determine by a preponderance of the evidence that termination is in the children's best interests. *In re Moss*, 301 Mich App 76, 89; 836 NW2d 182 (2013).

"In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (internal quotation marks and citation omitted). "The trial court may also consider a parent's history of domestic violence, [and] . . . the children's well-being while in care." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

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<sup>5</sup> We also reject respondent's argument that petitioner was required to provide reunification services. Such services are not required "when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Petitioner was required to seek termination if it suspected that a child was subjected to "battering, torture, or other severe physical abuse." MCL 712A.19a(2); MCL 722.638(a)(iii). Here, the petition, as well as the trial court's order finding statutory grounds for termination, noted the severe and ongoing nature of respondent's abuse of DA, including scars from beatings over most of her body, trauma to her genital area, and damage to her liver, as well as evidence that she was deliberately denied food and warmth by respondent. As the trial court stated during the dispositional hearing, this evidence supported the determination not only that DA had been physically abused, but in fact that she had been tortured. We therefore find no error in the trial court's failure to order, or petitioner's failure to provide, reunification services. See *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013).

<sup>6</sup> Respondent does not make specific reference to the trial court's best interest determination; however, respondent does present a second issue in her appellant brief that, while substantially repeating the first issue, additionally claims that the trial court erred in failing to consider certain statements of respondent's children made during the best interest hearing. Further, respondent's "Conclusion and Relief Requested" section of her brief states that it is "only in the best interests of the Appellant's children that this Court reverse the Trial Court's decision to terminate the Appellant's parental rights . . . ." Giving respondent the benefit of the doubt, we therefore address the trial court's best-interest determination.

Respondent argues that the trial court, in making its determination, failed to consider statements made by MW, JW, and EW that they wanted respondent to “get help.” Hanna indeed testified that MW wanted respondent to get help; however he also clearly expressed that he did not want to live with his mother. It is unclear to this Court to which statements of JW and EW respondent refers. However, even if respondent’s children wanted respondent to “get help,” it is clear from the record that respondent was in complete denial about her actions and was unwilling to seek such help. Further, even if these statements were indicative of a bond between respondent and her children, evidence of bond between children and parent must sometimes give way to concern for the children’s safety and stability. See *In re McIntyre*, 192, Mich App 47, 52; 480 NW2d 293 (1991). In light of the voluminous evidence that respondent severely abused and neglected her children, the trial court did not clearly err in determining that termination was in their best interests; indeed the record supports the inference that the children were at substantial risk of serious injury or death if they were returned to respondent’s care.

Affirmed.

/s/ Mark T. Boonstra  
/s/ David H. Sawyer  
/s/ Peter D. O’Connell